



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

5636 Southern Boulevard  
Virginia Beach, VA 23462  
www.deq.state.va.us

Robert G. Burnley  
Director

Francis L. Daniel  
Tidewater Regional Director  
(757) 518-2000

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO COMMONWEALTH CHESAPEAKE COMPANY, LLC

Registration number 40898

#### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1307, §10.1-1316, and §10.1-1319 between the State Air Pollution Control Board and Commonwealth Chesapeake Company, LLC, for the purpose of resolving certain violations of environmental law and regulations.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "CCC" means Commonwealth Chesapeake Company, LLC located at 3415 White Oak Way, New Church, VA 23415.

6. "Order" means this document, also known as a Consent Order.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Permit" means Title V Virginia Acid Rain Operating Permit.
9. "Regulations" means Virginia Regulations for the Control and Abatement of Air Pollution (9 VAC 5-80-10 et seq.).

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Commonwealth Chesapeake Company, LLC owns and operates the electrical peaker plant located at 3415 White Oak Way, New Church, VA 23415.
2. DEQ issued a Title V Virginia Acid Rain Operating Permit to CCC on May 2, 2003 for the operation of an electrical peaker plant.
3. 9 VAC 5-80-490F of the Regulation states: "The following requirements concerning recordkeeping and reporting apply: (2A) Submittal of reports of any required monitoring at least every six months."
4. Condition number VILC.3 of the Permit states: "The permittee shall submit the results of monitoring contained in any applicable requirement to DEQ no later than March 1 and September 1 of each calendar year. The time period[s] to be addressed are January 1 to June 30 and July 1 to December 31."
5. CCC is required to submit to DEQ by September 1, 2003 the results of monitoring, a Semi-Annual Monitoring Report, for the period from the date of issuance of the Permit May 2, 2003 to June 30, 2003.
6. CCC's Semi-Annual Monitoring Report for the period May 2, 2003 to June 30, 2003, was received at DEQ on February 27, 2004, 180 days late.
7. CCC violated the Permit by failing to submit the results of monitoring by the due date of September 1, 2003 for the period May 2, 2003 to June 30, 2003.
8. DEQ issued CCC a Notice of Violation on March 10, 2004 for the results of monitoring being submitted over 60 days late on February 27, 2004, for the period May 2, 2003 to June 30, 2003.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316.C, orders the Commonwealth Chesapeake Company, LLC, and the Commonwealth

Chesapeake Company, LLC voluntarily agrees, to pay a civil charge of \$1,490.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate the Commonwealth Chesapeake Company, LLC's Federal Identification Number, and shall be sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Commonwealth Chesapeake Company, LLC, for good cause shown by the Commonwealth Chesapeake Company, LLC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the Commonwealth Chesapeake Company, LLC by DEQ on March 10, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Commonwealth Chesapeake Company, LLC admits the jurisdictional allegations and factual findings contained herein.
4. The Commonwealth Chesapeake Company, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Commonwealth Chesapeake Company, LLC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by the Commonwealth Chesapeake Company, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Commonwealth Chesapeake Company, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Commonwealth Chesapeake Company, LLC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Commonwealth Chesapeake Company, LLC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Commonwealth Chesapeake Company, LLC. Notwithstanding the foregoing, the Commonwealth Chesapeake Company, LLC agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Commonwealth Chesapeake Company, LLC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Commonwealth Chesapeake Company, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, the Commonwealth Chesapeake Company, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of May 6, 2004.

Francis L. Daniel  
Francis L. Daniel, Regional Director  
for Robert G. Burnley, Director  
Department of Environmental Quality

The Commonwealth Chesapeake Company, LLC voluntarily agrees to the issuance of this Order.

By: Thomas A. Larson  
GENERAL MANAGER  
Date: 29 April 2004

Commonwealth of Virginia

City/County of Accomack

The foregoing document was signed and acknowledged before me this 29 day of  
April, 2004, by Thomas A. Larson, who is  
(month) (name)

General Manager of the Commonwealth Chesapeake Company, LLC, on behalf of the  
(title)

limited liability company.

William Jackson  
Notary Public

My Commission Expires August 31, 2004

My commission expires: \_\_\_\_\_